

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE ESTATE OF NENA CHARLEY,
by and through Personal Representative,
TIMOTHY CHARLEY, TIMOTHY
CHARLEY, as parent and next friend of
NILE CHARLEY, and TIMOTHY CHARLEY, Individually,

Plaintiffs,

vs.

Cause No. 1:22-cv-00033-JB-JFR

THE UNITED STATES OF AMERICA, ROBIN
RANEL SALES, R.N., JOELLE CATHERIN
CERO GO, R.N., AB STAFFING SOLUTIONS,
LLC, a Foreign Corporation, NEXT MEDICAL
STAFFING, a Foreign Corporation, and JOHN or
JANE DOE Corporation,

Defendants.

**PLAINTIFFS' MOTION FOR PROTECTIVE ORDER REGARDING
THE DEPOSITION OF BRUCE W. POLSKY, M.D.**

COME NOW Plaintiffs pursuant to Fed.R.Civ. P. 26(c)(1) and 30(a)(2)(A)(i), and
D.N.M. LR-Civ. 30.2., and respectfully moves the Court to issue a protective order precluding
Defendants from taking the deposition of Defendant United State's expert witness, Dr. Bruce W.
Polsky. Plaintiffs' Notice of Non-Appearance for Dr. Polsky's deposition was filed concurrently
with this Motion.

Pursuant to Rule 26(c)(1), Plaintiffs certify that they attempted to resolve this matter
without court action. Defendants are aware that Dr. Polsky cannot appear for his October 19,
2023, deposition, but have indicated that regardless of Dr. Polsky being amenable to another date
being made available for deposition, Defendant stated through counsel in a voicemail on October
18, 2023, at 5:28 PM, unheard until 8:20 PM that the deposition will be conducted as noticed the

next day at 8 AM (MST) without the witness' presence necessitating the filing of this Motion. Defendant USA submitted the deposition notice for Bruce W. Polsky, M.D. to occur in person in New York on October 19, 2023, at 3:40 pm on October 16, 2023. See Deposition Notice Attached as Exhibit A. Plaintiffs are drafting this Motion overnight before the deposition and cannot seek concurrence or opposition to the Motion under D.N.M. LR-Civ. 7.1 and Fed. R. Civ. P. 26(c)(1), although it is presumed opposed given all information available as of 8:20 PM the night before the deposition.

A Hearing was held on October 13, 2023, wherein the Court heard various motions concerning discovery. Although no motion was heard, the court and all counsel discussed the setting of the deposition of Plaintiffs' expert witnesses. At the time counsel for Plaintiff believed that Dr. Polsky was available on October 19, 2023, and the Court ordered the deposition be taken on that date to begin at 10:30 AM (MST), it is believed, as the Court was trying to assist the parties in moving the case along. There is no Minute Order on file as to this date and time. Unbeknownst to Plaintiffs' counsel at the hearing, Dr. Polsky had contacted co-counsel the day before to state that he could not be available on the 19th any longer but would work for find another date close in time. Additional contacts were made with Dr. Polsky to try and free up the 19th, but it is understood that he as the chair of his department is required to attend a Board meeting at his University and is not able to either prepare in time for the deposition, or not attend the meeting.

Plaintiffs respectfully request the United States reschedule the deposition of Dr. Bruce Polsky to November 8, 2023 and that the Court enter a Protective Order pursuant to Rule 26 (c)(1) concerning the deposition of Dr. Polsky presently set for October 19, 2023 in New York.

Respectfully submitted,

Attorneys for Plaintiffs
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Electronically signed
/s/ Lisa K. Curtis
Lisa K. Curtis
Melanie L. Ben

CERTIFICATE OF SERVICE

I hereby certify that on the 19th of October, 2023 at 4:12 AM (MST), I electronically caused counsel of record to be served by electronic means a copy of the foregoing Motion. The foregoing will be filed with the Clerk of Court using the CM/ECF system, as more fully reflected on the Notice of Electronic Filing.

/s/ Lisa K. Curtis
Lisa K. Curtis, Esq.